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Attorney for Plaintiff  
Darren Gilbert

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
(Fresno Division)**

DARREN GILBERT,  
Plaintiff,  
vs.  
CALIFORNIA HERITAGE PARTNERS,  
LLC; SAEED I. KHAN dba CIGARETTE  
CITY; NASREEN A. KHAN dba  
CIGARETTE CITY; KHAN RETAIL  
CORPORATION, INC. dba CIGARETTE  
CITY;  
Defendants.

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## I. SUMMARY

1. This is a civil rights action by plaintiff DARREN GILBERT ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Cigarette City  
14 East Gridley Road #C  
Gridley, California 95948  
(hereafter "the Facility")

*Gilbert v. California Heritage Partners, LLC., et al.*  
Complaint

1 costs, against CALIFORNIA HERITAGE PARTNERS, LLC; SAEED I. KHAN dba  
2 CIGARETTE CITY; NASREEN A. KHAN dba CIGARETTE CITY and KHAN RETAIL  
3 CORPORATION, INC. dba CIGARETTE CITY (hereinafter collectively referred to as  
4 “Defendants”), pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C.  
5 §§ 12101 et seq.) (“ADA”) and related California statutes.

6 **II. JURISDICTION**

7 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1333 for ADA  
8 claims.

9 4. Supplemental jurisdiction for claims brought under parallel California law –  
10 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1337.

11 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

12 **III. VENUE**

13 6. All actions complained of herein take place within the jurisdiction of the United  
14 States District Court, Eastern District of California, and venue is invoked pursuant to 28 U.S.C.  
15 § 1331(b), (c).

16 **IV. PARTIES**

17 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or  
18 persons), firm, and/or corporation.

19 8. Plaintiff is substantially limited in his ability to walk, and must use a  
20 wheelchair, knee scooter, or prosthetic for mobility. Consequently, Plaintiff is “physically  
21 disabled,” as defined by all applicable California and United States laws, and a member of the  
22 public whose rights are protected by these laws.

23 **V. FACTS**

24 9. The Facility is open to the public, intended for non-residential use, and its  
25 operation affects commerce. The Facility is therefore a public accommodation as defined by  
26 applicable state and federal laws.

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1       10. Plaintiff is a California resident who regularly travels to the area where the  
2 Facility is located and visited the Facility on or about February 18, 2022 to purchase cigarettes.  
3 During his visit to the Facility, Plaintiff personally encountered barriers (both physical and  
4 intangible) that interfered with, if not outright denied, Plaintiff's ability to use and enjoy the  
5 goods, services, privileges and accommodations offered at the Facility. These barriers include,  
6 but are not necessarily limited to, the following:

- 7           a) Plaintiff could not locate any designated accessible parking in the  
8 Facility's parking lot and parked in a standard accessible parking stall,  
9 which lacked an access aisle. Although Plaintiff was using his prosthetic  
10 during his visit, he knows that if he returns using his wheelchair, he will  
11 have difficulty unloading if there is not a clear space next to his van.
- 12          b) Plaintiff was not able to find a safe path of travel to the Facility  
13 entrance. There was no curb ramp serving the access aisle adjacent to his  
14 parking stall, and he was forced to step over the curb, which was  
15 difficult.

16       11. There may exist other barriers at the Facility which relate to Plaintiff's  
17 disabilities, and he will seek to amend this Complaint once such additional barriers are  
18 identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to  
19 his disabilities removed to afford him full and equal access.

20       12. Plaintiff was, and continues to be, deterred from visiting the Facility because  
21 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and  
22 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.  
23 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility  
24 once the barriers are removed.

25       13. Defendants knew, or should have known, that these elements and areas of the  
26 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to  
27 the physically disabled. Moreover, Defendants have the financial resources to remove these  
28 barriers from the Facility (without much difficulty or expense), and make the Facility

accessible to the physically disabled. To date, however, Defendants refuse to either remove those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

3        14. At all relevant times, Defendants have possessed and enjoyed sufficient control  
4 and authority to modify the Facility to remove impediments to wheelchair access and to  
5 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for  
6 Accessible Design. Defendants have not removed such impediments and have not modified the  
7 Facility to conform to accessibility standards. Defendants have intentionally maintained the  
8 Facility in its current condition and have intentionally refrained from altering the Facility so  
9 that it complies with the accessibility standards.

10        15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is  
11 so obvious as to establish Defendants' discriminatory intent. On information and belief,  
12 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere  
13 to relevant building standards; disregard for the building plans and permits issued for the  
14 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the  
15 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'  
16 property continues to exist in its non-compliant state. Plaintiff further alleges, on information  
17 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the  
18 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

## VI. FIRST CLAIM

## **Americans with Disabilities Act of 1990**

#### Denial of “Full and Equal” Enjoyment and Use

16. Plaintiff re-pleads and incorporates by reference the allegations contained in  
each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

24       17. Title III of the ADA holds as a “general rule” that no individual shall be  
25 discriminated against on the basis of disability in the full and equal enjoyment (or use) of  
26 goods, services, facilities, privileges, and accommodations offered by any person who owns,  
27 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

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18. Defendants discriminated against Plaintiff by denying Plaintiff "full and equal  
enjoyment" and use of the goods, services, facilities, privileges and accommodations of the  
Facility during each visit and each incident of deterrence.

### Failure to Remove Architectural Barriers in an Existing Facility

5       19. The ADA specifically prohibits failing to remove architectural barriers, which  
6 are structural in nature, in existing facilities where such removal is readily achievable. 42  
7 U.S.C. § 12182(b)(2)(A)(iv).

8        20. When an entity can demonstrate that removal of a barrier is not readily  
9 achievable, a failure to make goods, services, facilities, or accommodations available through  
10 alternative methods is also specifically prohibited if these methods are readily achievable. Id.  
11 § 12182(b)(2)(A)(v).

12        21. Here, Plaintiff alleges that Defendants can easily remove the architectural  
13 barriers at the Facility without much difficulty or expense, that the cost of removing the  
14 architectural barriers does not exceed the benefits under the particular circumstances, and that  
15 Defendants violated the ADA by failing to remove those barriers, when it was readily  
16 achievable to do so.

17       22. In the alternative, if it was not “readily achievable” for Defendants to remove  
18 the Facility’s barriers, then Defendants violated the ADA by failing to make the required  
19 services available through alternative methods, which are readily achievable.

## Failure to Design and Construct an Accessible Facility

21       23. Plaintiff alleges on information and belief that the Facility was designed and  
22 constructed (or both) after January 26, 1993 – independently triggering access requirements  
23 under Title III of the ADA.

24       24. The ADA also prohibits designing and constructing facilities for first occupancy  
25 after January 26, 1993, that aren't readily accessible to, and usable by, individuals with  
26 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

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25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.<sup>1</sup>

## Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

7       27. The ADA also requires that facilities altered in a manner that affects (or could  
8 affect) its usability must be made readily accessible to individuals with disabilities to the  
9 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's  
10 primary function also requires making the paths of travel, bathrooms, telephones, and drinking  
11 fountains serving that area accessible to the maximum extent feasible. *Id.*

12       28. Here, Defendants altered the Facility in a manner that violated the ADA and  
13 was not readily accessible to the physically disabled public – including Plaintiff – to the  
14 maximum extent feasible.

#### Failure to Modify Existing Policies and Procedures

16        29. The ADA also requires reasonable modifications in policies, practices, or  
17 procedures, when necessary to afford such goods, services, facilities, or accommodations to  
18 individuals with disabilities, unless the entity can demonstrate that making such modifications  
19 would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

20       30. Here, Defendants violated the ADA by failing to make reasonable modifications  
21 in policies, practices, or procedures at the Facility, when these modifications were necessary to  
22 afford (and would not fundamentally alter the nature of) these goods, services, facilities, or  
23 accommodations.

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<sup>28</sup> <sup>1</sup> Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

### Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facility that are required to be readily accessible to and usable by persons with disabilities.

32. Such failure by Defendants to maintain the Facility in an accessible condition was not an isolated or temporary interruption in service or access due to maintenance or repairs.

33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

## VII. SECOND CLAIM

## **Unruh Act**

34. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

35. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

36. California Civil Code § 51.5 also states, in part that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

37. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

38. Defendants' aforementioned acts and omissions denied the physically disabled public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

39. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory minimum damages of \$4,000 for each offense.

1       41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and  
2 ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code  
3 § 52(a).

## VIII. THIRD CLAIM

## **Denial of Full and Equal Access to Public Facilities**

6           42. Plaintiff re-pleads and incorporates by reference the allegations contained in  
7 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

8       43. Health and Safety Code § 19955(a) states, in part, that: California public  
9 accommodations or facilities (built with private funds) shall adhere to the provisions of  
10 Government Code § 4450.

11        44. Health and Safety Code § 19959 states, in part, that: Every existing (non-  
12 exempt) public accommodation constructed prior to July 1, 1970, which is altered or  
13 structurally repaired, is required to comply with this chapter.

14       45. Plaintiff alleges the Facility is a public accommodation constructed, altered, or  
15 repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code  
16 § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

17       46. Defendants' non-compliance with these requirements at the Facility aggrieved  
18 (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly,  
19 Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

## **IX. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

- 22       1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

23       2. Statutory minimum damages under section 52(a) of the California Civil Code

24                  according to proof.

25       3. Declaratory relief finding that Defendants violated the ADA.

26       4. Attorneys' fees, litigation expenses, and costs of suit.<sup>2</sup>

<sup>28</sup> <sup>2</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

- 1       5. Interest at the legal rate from the date of the filing of this action.
- 2       6. For such other and further relief as the Court deems proper.

3 Dated: 8/8/2022

MOORE LAW FIRM, P.C.

5 /s/ Tanya E. Moore

6 Tanya E. Moore  
7 Attorney for Plaintiff  
Darren Gilbert

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**VERIFICATION**  
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7 I, DARREN GILBERT, am the plaintiff in the above-entitled action. I have read the  
8 foregoing Complaint and know the contents thereof. The same is true of my own knowledge,  
9 except as to those matters which are therein alleged on information and belief, and as to those  
10 matters, I believe them to be true.  
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12 I verify under penalty of perjury that the foregoing is true and correct.  
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14 Dated: 8/8/2022

/s/ Darren Gilbert  
15 Darren Gilbert

16 I attest that the original signature of the person whose electronic signature is shown  
17 above is maintained by me, and that his concurrence in the filing of this document and  
18 attribution of his signature was obtained.

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/s/ Tanya E. Moore  
Tanya E. Moore  
Attorney for Plaintiff,  
DARREN GILBERT